

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HECTOR DIAZ,) Case No.: 10-CV-05043-LHK
Petitioner,) ORDER TO SHOW CAUSE
v.)
JOHN W. HAVILAND, Warden,)
Respondent.)

Petitioner, a state prison inmate incarcerated at California State Prison at Solano, California, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a decision by the Governor of the State of California to revoke parole granted him by the California Board of Parole Hearings (“BPH”). The Court orders Respondent to show cause why the petition should not be granted.

I. BACKGROUND

Petitioner was arrested on July 18, 1984 and pled guilty to first degree murder. Petitioner was received in state prison on May 31, 1985, and is serving a sentence of twenty-five years to life.

On August 21, 2008, the BPH found petitioner suitable for parole; however, on January 16, 2009, Governor Schwarzenegger reversed the BPH's parole suitability determination.

Petitioner has unsuccessfully challenged the Governor's decision in state courts. On September 1, 2010, the Supreme Court of California denied his final petition for state habeas relief.

II. DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21, (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner's Claims

As grounds for federal habeas relief, Petitioner claims that there is no evidence that he is currently a danger to society and thus, the decision by the Governor to revoke parole granted to him by the BPH violated his right to due process because the Governor's decision was not supported by some evidence demonstrating that he poses a current danger to society. Liberally construed, Petitioner's claim appears colorable under § 2254 and merits an answer from Respondent.

III. CONCLUSION

1. The Clerk shall serve by mail a copy of this Order, the petition and all attachments thereto, upon the Respondent and the Respondent's attorney, the Attorney General of the State of California.

2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90) days** of the date this Order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the underlying state criminal record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty (30) days** of the date the answer is filed.

1 3. In lieu of an answer, Respondent may file a motion to dismiss on procedural grounds as
2 set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases
3 within **ninety (90) days** of the date this Order is filed. If Respondent files such a motion,
4 Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-
5 opposition within **thirty (30) days** of the date the motion is filed, and Respondent shall file with
6 the Court and serve on Petitioner a reply within **fifteen (15) days** of the date the opposition is filed.

7 4. Upon a showing of good cause, requests for reasonable extensions of time will be
8 granted provided they are filed on or, preferably, before the deadline they seek to extend.

9 **IT IS SO ORDERED.**

10 Dated: December 6, 2010



LUCY H. KOH
United States District Judge